100. MAC § 299.9106(i) (Section 1004(15), of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10) defines "person" to include corporations.

101. MAC § 299.9109(o) (40 C.F.R. § 279.1) defines used oil to include any oil that has been refined, used and as a result of such use contaminated by physical or chemical impurities.

102. MAC § 299.9102(j) (40 C.F.R. § 260.10) defines container to mean any portable device in which a material is stored, transported, treated, disposed of or otherwise handled.

103. R & F is a corporation and thus a "person" under MAC § 299.9106(i) (Section 1004(15), of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10).

104. The liquids contained within the drums identified in paragraphs 44(f) and 49 consisted of oil from transmission parts, aluminum chip paper or machine turnings. The liquids contained within the drums is used oil as that term is defined in MAC § 299.9109(o) (40 C.F.R. § 279.1).

105. R & F's actions of storing used oil in these drums, segregating scrap wastes and collecting used oil from these wastes on the ground, in piles, in the surface impoundments and in containers such as drums, tanks and the drip pad make it a "used oil generator" as defined by MAC § 299.9109(w) (40 C.F.R. § 279.1).

106. Since at least July 21, 1999, R & F stored used oil in 10 drums at the R& F facility that were in poor condition in that they were crushed, open and tilted so as to drain the contents from them onto the ground.

107. R & F violated MAC §§ 299.9810(3) (40 C.F.R. § 279.22(b)) when it stored the used oil in the 10 poor conditioned drums identified in paragraph 106 above. This constitutes 10 separate violations of MAC § 299.9810(3), (40 C.F.R. 279.22(b)) for at least one day, July 21, 1999.

F. COUNT VI RCRA

FAILURE TO LABEL 100 USED OIL CONTAINERS

108. Paragraphs 12 - 36 and 42 - 61 are incorporated herein as if set forth in their entirety.

109. MAC §§ 299.9810(3)(40 C.F.R. § 279.22(c)) requires a used oil generator to label or mark containers used to store used oil with the words "Used Oil."

110. MAC § 299.9109(w)(40 C.F.R. § 279.1) defines a used oil generator as any person whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

111. MAC § 299.9106(i)(Section 1004(15), of RCRA, 42 U.S.C. § 6903(15), and 40 C.F.R. § 260.10) defines "person" to include corporations.

112. MAC § 299.9109(o)(40 C.F.R. § 279.1) defines used oil to include any oil that has been refined, used and as a result of such use contaminated by physical or chemical impurities.

113. MAC § 299.9102(j) (40 C.F.R. § 260.10) defines container to mean any portable device in which a material is stored, transported, treated, disposed of or otherwise handled.

114. R & F is a corporation and thus a "person" under MAC § 299.9106(i) (Section 1004(15), of RCRA, 42 U.S.C. § 6903(15) and 40 C.F.R. § 260.10).

115. The liquids contained within the drums identified in paragraphs 44(f) and 49 consisted of oil from transmission parts, aluminum chip paper or machine turnings. The liquids in such drums are used oil as that term is defined in MAC § 299.9109(o) (40 C.F.R. § 279.1).

116. R & F's actions of storing used oil in these drums, segregating scrap wastes and collecting used oil from these wastes on the ground, in piles, in the surface impoundments and in containers such as drums, tanks and the drip pad make it a "used oil generator" as defined by MAC § 299.9109(w) (40 C.F.R. § 279.1).

117. On or about July 21, 1999, R & F stored used oil in 100 drums that did not have any labeling.

118. Since at least July 21, 1999 R & F violated MAC 299.9810(3) (40 C.F.R. § 279.22(c)) when it stored the used oil in drums without labeling or marking them "Used Oil". This constitutes 100 separate violations of MAC § 299.9810(3), (40 C.F.R. 279.22(b)) for at least one day, July 21, 1999.

G. COUNT VII RCRA

FAILURE TO TIMELY RESPOND TO AN INFORMATION REQUEST

119. On March 15, 2000 U.S. EPA sent R & F a written request for information pursuant to Section 3007 of RCRA, 42 U.S.C. § 6927.

120. On March 17, 2000 R & F received U.S.EPA's written information request identified in paragraph 119 above.

121. R & F's response to the information request was due on April 17, 2000. Upon the request of R & F EPA extended this date to May 2, 2000.

122. On June 10, 2000 EPA sent R & F a letter. In that letter EPA informed R & F that it had not received a response from R & F to EPA's information request.

123. On June 25, 2000 R & F sent EPA an unsigned draft written response to the information request.

124. On August 18, 2000 R & F sent U.S. EPA its signed written response to the information request. It was received on August 22, 2000.

125. R & F violated section 3007 of RCRA, 42 U.S.C. 6927 when it failed to submit a written response to the information request by May 2, 2000. The proposed penalty seeks a multi-day penalty from June 10, 2000 to June 25, 2000.

IV. PROPOSED CIVIL PENALTY

As presented in detail below the Complainant proposes a civil penalty of $319,836.00 for the violations alleged in Counts I - VII.

A. COUNTS I & II - CAA

126. Pursuant to Section 113(d)(1)(B) of the CAA, 42 U.S.C. § 7413(d)(1)(B), U.S. EPA may assess a civil penalty of up to $27,500 per day for each violation of Section 608 of the Act and for violation of regulations promulgated pursuant to Section 608.

127. Section 113(e)(1) of the Act, 42 U.S.C. § 7413(e)(1), authorizes the assessment of a civil penalty based upon the seriousness and duration of the

violation alleged, and after consideration of the size of the business, the economic impact of the penalty on business, the Respondent's full compliance history and good faith efforts to comply, payment by Respondent of penalties previously assessed for the same alleged violation, the economic benefit of noncompliance, and other factors as justice may require.

128. After considering these factors, U.S. EPA proposes that the Respondent be assessed a civil penalty of $127,000 for Counts I & II of this Complaint - $63,5000 for each Count. This proposed penalty has been calculated in accordance with the Penalty Policy for Violations of 40 CFR Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant ("CAA Penalty Policy"), dated June 1, 1994. A copy of the CAA Penalty Policy accompanies this Complaint.

129. Under the CAA Penalty Policy, a penalty is derived from the sum of the economic benefit of the violation and the gravity of the violation.

130. Under the CAA Penalty Policy, U.S. EPA considers the economic benefit a violator derives from the alleged violations in determining the appropriate penalty. A violator cannot be allowed to derive monetary profit from noncompliance with the CAA, both for deterrence purposes and because other regulated entities have incurred expenses in complying with the CAA. In this case, based on information presently available, U.S. EPA has determined that the economic benefit to R & F was negligible. Hence, the proposed penalty does not include an economic benefit component.

131. The Complainant calculated the seriousness or gravity of the violations by considering the potential environmental harm, the extent of

deviation from the regulatory scheme, the duration of the violations and the size of the violator.

132. The Complainant for Count I considered the potential for environmental harm to be major since the violations allege improper disposal of refrigerants. Proper disposal of refrigerants is a major component of the statutory and regulatory program promulgated under Part 82 for the control of ozone depleting substances. Respondent's failure to properly recover or obtain verification statements prior to disposal is a major deviation from the regulations contained in Part 82. In deriving the proposed penalty the Complainant considered that the violations occurred at the time of the inspection with no records available to determine if they may have occurred at other times in the past. Complainant further considered that there were seven separate small appliances, or parts thereof, as alleged in paragraph 38, identified on-site during EPA's July 1999 inspection. Complainant treated this as seven separate violations.

133. The Complainant for Count II considered the potential for environmental harm to be major since the violations allege improper record keeping. Record keeping is an important component of the regulations contained in Part 82. Respondent did not maintain any record of the verification statements required by Part 82. Without such records it is not possible to accurately discern the Respondent's compliance with the Part 82 requirements. Respondent's failure to properly keep records of verification statements prior to disposal is a major deviation from the regulations contained in Part 82. In deriving the proposed penalty the Complainant considered that there were at least seven instances during the inspection where verifications statements were not

kept. Such records would have been required. The Respondent did not retain records of these transactions nor did it retain records of the required verification statements. Complainant treated these as seven separate violations.

134. Complainant is unaware of any facts which would cause it to adjust the proposed penalty for Counts I and II based on Respondent's compliance history, previous penalties assessed for the same alleged violations or good faith efforts to comply.

135. Based upon the facts alleged in Counts I & II of this Complaint and upon the seriousness of the violations alleged, U.S. EPA hereby proposes to issue a Final Order to the Respondent assessing a penalty in the amount of $127,000 for Counts I & II. This proposed penalty may be adjusted if the Respondent establishes a bona fide issue of ability to pay or other affirmative defenses relevant to the determination of any final penalty. The proposed civil penalty has been determined in accordance with the Clean Air Act based upon the best information available to U.S. EPA at this time, and in consideration of the nature, circumstances, extent and gravity of the alleged violations. With respect to the Respondent, other factors may mitigate calculation of a final penalty.

136. Respondent shall pay the assessed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Joseph Cardile (AE-17J)
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Richard Clarizio
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

B. COUNT III CWA

137. The Administrator of U.S. EPA may assess a civil penalty of up to $10,000 per day of violation up to a total of $125,000 for Class II violations that occurred prior to January 31, 1997, and of up to $11,000 per day of violation up to a total of $137,500 for Class II violations that occurred on or after January 31, 1997 according to Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. §1311(b)(6)(B)(ii), and 40 C.F.R. Part 19.

138. Under Section 311(b)(8) of the Act, 33 U.S.C. § 1321(b)(8), the Administrator of U.S. EPA must consider the following factors when assessing an administrative penalty under Section 311(b):

a. the seriousness of the violations;
b. the economic benefit to the violator, if any, resulting from the violations;
c. the degree of culpability involved;
d. any other penalty for the same incident;
e. any history of prior violations;
f. the nature, extent, and degree of success of any efforts of the violator to minimize or mitigate the effects of the discharge;